

**SYNOPSIS**

**CORPORATE LICENSE TAX – WAIVER OF INTEREST** – There being no statutory authority for the waiver of interest assessed pursuant to W. Va. Code § 11-10-17, the West Virginia Office of Tax Appeals will affirm the assessment of interest against a domestic (West Virginia) corporation that is authorized to do business in this State. *See* W. Va. Code § 11-12C-2(b)(1).

**CORPORATE LICENSE TAX – WAIVER OF ANNUAL FEE FOR SECRETARY OF STATE, AS ATTORNEY-IN-FACT** -- There being no statutory authorization for the waiver of the annual fee for the Secretary of State, as attorney-in-fact, assessed pursuant to W. Va. Code § 11-12C-5, the West Virginia Office of Tax Appeals will affirm the assessment of said fee against a domestic (West Virginia) corporation that is authorized to do business in this State. *See* W. Va. Code §§ 11-12C-2(b)(1).

**CORPORATE LICENSE TAX – WAIVER OF ADDITIONS TO TAX** – In accordance with the representation of the Tax Commissioner that she has no objection to the waiver of additions to tax assessed pursuant to W. Va. Code § 11-10-18(a)(1)-(2), all additions to tax will be waived.

**CORPORATE LICENSE TAX – ABATEMENT OF ADMINISTRATIVE PENALTY** – In accordance with the representation of the Tax Commissioner that she has no objection to the abatement of the administrative penalty assessed pursuant to W. Va. Code § 11-12C-8(a), the administrative penalty will be abated.

**FINAL DECISION**

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a tax assessment against the Petitioner. The assessment was for the year period of July 1, 2002, through June 30, 2003, for tax, interest, computed through January 15, 2003, an administrative penalty imposed pursuant to W. Va. Code § 11-12-8(a), the annual fee for the Secretary of State as attorney-in-fact, pursuant to W. Va. Code § 11-12C-5, and additions to tax. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked February 12, 2003, the Petitioner timely filed a petition for reassessment.<sup>1</sup> The Tax Commissioner then filed an answer to the petition for appeal. Subsequently, the Petitioner filed a motion to strike, in which it contended that the Commissioner had no grounds upon which she could assess additions to tax and penalties. The Petitioner further requested waiver of additions to tax as a matter of equity.

Subsequently, notice of a hearing on the petition was sent to the Petitioner. The notice of hearing to the Petitioner went unclaimed. There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

### **FINDINGS OF FACT**

1. By reason of the Petitioner's failure to claim the notice of hearing, it presented no evidence in support of its position.
2. The Tax Commissioner had no objection to abating the administrative penalty, or to waiving the additions to tax.

### **DISCUSSION**

The only issue raised by the Petitioner in this matter is the waiver of interest and additions to tax, and the abatement of the administrative penalty, and the annual statutory fee for the Secretary of State as attorney-in-fact. At the hearing, in spite of the fact that the Petitioner presented no evidence, the Tax Commissioner had no objection to abatement of the administrative penalty and to waiver of the additions to tax. The Commissioner maintains that

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<sup>1</sup> There is nothing in the field maintained by this Office to show that the petition for reassessment was filed with the West Virginia Office of Tax Appeals. However, the Tax Commissioner presented a copy of the petition for reassessment at the hearing, which shows that it was postmarked February 12, 2003, and received by the mail clerk for the Department of Tax and Revenue on February 14, 2003. The Petitioner mailed the petition in a preprinted

statutory interest may not be waived and the annual fee for the Secretary of State, as attorney-in-fact, may not be abated.

There is no statutory provision permitting this Office to waive statutory interest. Consequently, this Office has no authority to waive any interest.

With respect to the abatement of the annual fee for the Secretary of State as attorney-in-fact, the burden of proof is on the Petitioner to prove that there is statutory authority permitting this Office to abate the fee. The Petitioner has not directed this Office's attention to any such provision of the Code, either in its petition for reassessment or in its motion to strike. This Office is not aware of provision permitting abatement of the fee. Thus, this Office holds that it has no authority to abate the fee for the Secretary of State as attorney-in-fact.

In light of the agreement of the Tax Commissioner to waive additions to tax and to abate the administrative penalty, the Petitioner has been afforded all of the relief to which it is statutorily entitled.

### **CONCLUSIONS OF LAW**

Based upon all of the above it is **DETERMINED** that:

1. There is no statutory authority permitting the West Virginia Office of Tax Appeals to waive interest imposed pursuant to W. Va. Code § 11-10A-17.
2. There is no statutory authority permitting the West Virginia Office of Tax Appeals to abate the fee for the Secretary of State, as attorney-in-fact, imposed pursuant to W. Va. Code § 11-12C-5 [2002].

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envelope, addressed to the Internal Auditing Division, at a post office box other than that of the Office of Tax Appeals.

3. Because the Tax Commissioner has no objection to doing so, the administrative penalty imposed pursuant to W. Va. Code § 11-10A-8(a), and the additions to tax imposed pursuant to W. Va. Code § 11-10A-18 are waived.

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the tax assessment issued against the Petitioner for the year period of July 1, 2002, through June 30, 2003, for tax, interest, through January 15, 2003, an administrative penalty imposed pursuant to W. Va. Code § 11-12-8(a), the annual fee for the Secretary of State as attorney-in-fact, imposed pursuant to W. Va. Code § 11-12C-5, and additions to tax, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for tax, interest, updated through November 30, 2003, and the fee for the Secretary of State, as attorney-in-fact, for a **total revised** liability. The administrative penalty and the additions to tax, however, **VACATED** in full.

**Interest continues to accrue** on this unpaid tax at a daily rate until this liability is fully paid.